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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/765,371

01/27/2004

L. Alma Jessop

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7590

06/28/2006

WORKMAN NYDEGGER  
(F/K/A WORKMAN NYDEGGER & SEELEY)  
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SALT LAKE CITY, UT 84111

EXAMINER

SAFAVI, MICHAEL

ART UNIT

PAPER NUMBER

3673

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/765,371	<b>Applicant(s)</b> JESSOP ET AL.	
	<b>Examiner</b> M. Safavi	<b>Art Unit</b> 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-22 and 32-46 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-22, 32-42, 45, and 46 is/are rejected.
- 7) ☒ Claim(s) 43 and 44 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/22/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

***Election/Restrictions***

Applicant's election without traverse of the invention of Group II in the reply filed on April 07, 2006 is acknowledged.

***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "pair of vertical panels that hold the material in the shape against an inclined surface", (claims 21 and 45), must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 13, 14, 21, 22, 45, and 46 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not appear clear and complete with respect to “a pair of vertical panels that hold the material in the shape against an inclined surface” as appears in each of claims 21 and 45. Further, The specification does not appear clear and complete with respect to “one of said plurality of forms being disposed between said first flange and said second flange” as appears in claim 13. The specification does not appear clear and complete with respect to how a “form” is disposed between the flanges of an “end member”.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 11-22, 38, 45, and 46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12, “two of said plurality of forms that are spaced apart from one another” lacks antecedent basis within the claim. It is therefore, not clear as to what “two of said plurality of forms that are spaced apart from one another” refers.

Claim 13, it is not clear as to what is being defined by “one of said plurality of forms being disposed between said first flange and said second flange”. The specification does not appear clear and complete with respect to how a “form” is disposed between the flanges of an “end member”.

Claim 18, “said first portion and said second portion” lacks antecedent basis within the claim. It is therefore, not clear as to what “said first portion and said second portion” refers.

Claim 21, it is not clear as to what is being defined by “a pair of vertical panels that hold the material in the shape against an inclined surface”. The specification does not appear clear and complete with respect to a “form” having “a pair of vertical panels that hold the material in the shape against an inclined surface”.

Claim 38, line 1, to which panel does “said panel” refer?

Claim 45, it is not clear as to what is being defined by “a pair of vertical panels that hold the material in the shape against an inclined surface”. The specification does not appear clear and complete with respect to a “form” having

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“a pair of vertical panels that hold the material in the shape against an inclined surface”.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 11-18 and 32-42 are rejected under 35 U.S.C. 102(b) as being anticipated by McAbee et al. '272.** As for **claims 11, 32, and 39**, McAbee '272 discloses, Figs. 1, 5, 12, and 13-15, a plurality of forms 10 each said form having: a panel 18 comprising at least one bracket 22, 24 mounted to each of said first end and said second end of said panel; a plurality of stakes 26 slidably cooperating with said plurality of forms when said hole, (of 22 and 24), of two adjacent forms of said plurality of forms align one with another; and at least one tie 40, 50 secured to a top of one or more of said forms to maintain a spacing between spaced apart and parallel forms of said plurality of forms. At least one

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skim member 11 can be seen bridging a gap between two of said plurality of forms, (**claims 11, 15, 16, 17, 18, 32, 36, 37, and 40-42**). End member, or bulkhead form, is at 18 of Fig. 1 or 12, for example, with bulkhead bracket at 16 or 14, (**claims 12, 13, 33, 34, and 39**). Hole of bulkhead bracket is as shown in Fig. 5, (i.e., bulkhead bracket is as bracket of form), (**claims 14 and 35**). The form assembly of McAbee et al. can be seen as formed of wood and metal, (**claim 38**).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 11-18 and 32-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over McAbee et al. '272.**

McAbee et al. discloses the invention of claims 11-18 and 32-42 as outlined above. In any event, to have provided the bracket 40, 150 to two parallel spaced apart forms while utilizing the end panel, or bulkhead panel, shown in Figs. 1 and 12, thus providing a sturdy form assembly as by bracing along a given distance of span, as well as utilize the Fig. 5 bracket along any portion of the span, including straight portions, thus allowing for use of a single bracket for the entire

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form assembly, would have been obvious to one having ordinary skill in the art at the time the invention was made.

Claims 43 and 44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 19 and 20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



**MICHAEL SAFAVI**  
**PRIMARY EXAMINER**  
**ART UNIT 354**

M. Safavi  
June 18, 2006